

SUBCHAPTER A. DEFINITIONS, SEVERABILITY, AND SMALL EMPLOYER HEALTH REGULATIONS
28 TAC §26.5

SUBCHAPTER C. LARGE EMPLOYER HEALTH INSURANCE REGULATIONS
28 TAC §26.301

INTRODUCTION. The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §26.5(g) and §26.301(j), concerning employer-related health benefit plan regulations. The amendments to the sections are proposed to clarify that the requirements and mandates of Senate Bill 1264, 86th Legislature, 2019, including Insurance Code Chapter 1467, apply to certificates of insurance (COIs) issued to certain Texas residents.

EXPLANATION. TDI has historically applied Texas insurance laws and mandates to COIs issued to Texas-resident employees under a group accident or health plan that is issued to the employee's out-of-state employer by an insurer that is licensed and doing business in Texas. See the adoption order for §26.5 and §26.301 at 42 Tex Reg 2545 (stating in response to a comment that the language adopted in §26.5(g) and §26.301(j) "is not a change and reflects how TDI has consistently applied the statutory and regulatory requirements"). TDI has, however, received questions from interested persons about whether the requirements of SB 1264 apply to these COIs.

SB 1264 amended the Insurance Code to establish consumer protections against balance billing by certain out-of-network providers. The bill (1) prohibits those providers from billing health benefit plan enrollees for certain covered health care services or supplies in an amount greater than an applicable copayment, coinsurance, or deductible under the plan; (2) provides for the right of those providers to receive payment for those services or supplies at the usual and customary rate or at an agreed rate; and (3)

establishes requirements for the inclusion of a balance billing prohibition notice in an explanation of benefits. *See, e.g.*, Tex. Ins. Code §§1271.008, 1271.157, 1301.010, and 1301.164. The bill also establishes procedures for out-of-network claim dispute resolution through arbitration or mediation, depending on the type of provider at issue. *See id.*; Tex. Ins. Code Chapter 1467.

The proposed amendments to §26.5(g) and §26.301(j) are intended to clarify that carriers that are licensed and doing business in Texas and that issue group accident or health plans to an out-of-state employer and deliver COIs to Texas-resident employees are subject to SB 1264, including Insurance Code Chapter 1467. But note that by expressly listing SB 1264 in §26.5(g) and §26.301(j), it is not TDI's intent to otherwise limit the applicability of other laws and mandates to carriers licensed in this state that issue COIs covering Texas residents.

The proposed amendments also implement Insurance Code Art. 21.42, which provides, "Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same." *See Howell v. Am. Live Stock Ins. Co.*, 483 F.2d 1354, 1360 n.4 (5th Cir. 1973) (in the context of group policies, "the fact that the insurer does any business in Texas is sufficient to require that Texas law apply to any contract between it and a Texas resident, regardless of the intention or expectation of the parties"); *General Am. Life Ins. Co. v. Rodriguez*, 641 S.W.2d 264, 266-67 (Tex. App.—Houston [14th Dist.] 1982, no writ) (Art. 21.42 applies where group life policy issued to out-of-state employer covered employee residing in Texas).

An additional change is proposed to §26.5 to conform to agency style for a reference to a code chapter.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of the Regulatory Initiatives Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them, other than that imposed by statute. Ms. Bowden made this determination because the amendments as proposed do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Bowden expects that administering them will have the public benefit of clarifying the applicability of SB 1264 to certain carriers and COIs, which in turn will provide strong consumer protections for Texas residents and providers.

Ms. Bowden expects that the proposed amendments will not increase the cost of compliance because they do not impose requirements beyond those in statute. The proposed amendments simply clarify the applicability of SB 1264, and do not add any new requirements. As a result, any resulting cost is attributable to SB 1264 and not the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on

small or micro businesses, or on rural communities. Because the proposed amendments simply clarify the applicability of SB 1264, any economic impact results from the law and not the proposed amendments. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposal:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action.

As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 23, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, PO Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, PO Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 23, 2023. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER A. DEFINITIONS, SEVERABILITY, AND SMALL EMPLOYER HEALTH REGULATIONS
28 TAC §26.5. APPLICABILITY AND SCOPE

STATUTORY AUTHORITY. TDI proposes amendments to §26.5 under Insurance Code Art. 21.42 and §§843.151, 1301.007, 1467.003, 1501.010, and 36.001.

Insurance Code Article 21.42 provides that any insurance payable to any citizen or inhabitant of this state by a company doing business within this state is held to be a contract made and entered into and governed by Texas insurance law despite execution of the contract or payment of the premiums outside of this state.

Insurance Code §843.151 authorizes the Commissioner to adopt rules as necessary and proper to implement laws applicable to health maintenance organizations, including Chapters 843 and 1271.

Insurance Code §1301.007 authorizes the Commissioner to adopt rules as necessary to implement Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Insurance Code §1467.003 requires the Commissioner to adopt rules as necessary to implement the Commissioner's powers and duties under Insurance Code Chapter 1467, concerning Out-of-Network Claim Dispute Resolution.

Insurance Code §1501.010 authorizes the Commissioner to adopt rules necessary to implement Chapter 1501, concerning the Health Insurance Portability and Availability Act.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 26.5(g) implements Texas Insurance Code Art. 21.42 and SB 1264.

TEXT.

§26.5. Applicability and Scope.

(a) Insurance Code Chapter 1501, ~~[[concerning Health Insurance Portability and Availability Act,]]~~ and this subchapter regulate all health benefit plans sold to small employers, whether sold directly or through associations or other groupings of small employers.

(b) - (f) (No change.)

(g) A carrier licensed in this state that issues a certificate of insurance covering a Texas resident is responsible for ensuring that the certificate complies with applicable Texas insurance laws and rules, including Senate Bill 1264, 86th Legislature, 2019, and

other mandated benefits, regardless of whether the group policy underlying the certificate was issued outside the state.

(h) - (i) (No change.)

SUBCHAPTER C. LARGE EMPLOYER HEALTH INSURANCE REGULATIONS **28 TAC §26.301. APPLICABILITY, DEFINITIONS, AND SCOPE**

STATUTORY AUTHORITY. TDI proposes amendments to §21.301 under Insurance Code Art. 21.42 and §§843.151, 1301.007, 1467.003, 1501.010, and 36.001.

Insurance Code Article 21.42 provides that any insurance payable to any citizen or inhabitant of this state by a company doing business within this state is held to be a contract made and entered into and governed by Texas insurance law despite execution of the contract or payment of the premiums outside of this state.

Insurance Code §843.151 authorizes the Commissioner to adopt rules as necessary and proper to implement laws applicable to health maintenance organizations, including Chapters 843 and 1271.

Insurance Code §1301.007 authorizes the Commissioner to adopt rules as necessary to implement Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Insurance Code §1467.003 requires the Commissioner to adopt rules as necessary to implement the Commissioner's powers and duties under Insurance Code Chapter 1467, concerning Out-of-Network Claim Dispute Resolution.

Insurance Code §1501.010 authorizes the Commissioner to adopt rules necessary to implement Chapter 1501, concerning the Health Insurance Portability and Availability Act.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 26.301(j) implements Texas Insurance Code Art. 21.42 and SB 1264.

TEXT.


§26.301. Applicability, Definitions, and Scope.

(a) - (i) (No change.)

(j) A carrier licensed in this state that issues a certificate of insurance covering a Texas resident is responsible for ensuring that the certificate complies with applicable Texas insurance laws and rules, including Senate Bill 1264, 86th Legislature, 2019, and other mandated benefits, regardless of whether the group policy underlying the certificate was issued outside the state.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on December 8, 2022.

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Allison Eberhart, Deputy General Counsel
Texas Department of Insurance